

175042  
SA.

C. DUKES SCOTT  
EXECUTIVE DIRECTOR

P.O. Box 11263  
Columbia, S.C. 29211



Phone: (803) 737-0800  
Fax: (803) 737-0801

DAN F. ARNETT  
CHIEF OF STAFF

August 3, 2005

**VIA HAND DELIVERY**

Mr. Charles L.A. Terreni  
Chief Clerk/Administrator  
**South Carolina Public Service Commission**  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

RECEIVED

AUG 04 2005

PSO SC  
DOCKETING DEPT.

8/4/05  
too

2005 AUG -3 PM 4:20

Re: Petition of the Office of Regulatory Staff to Request Forfeiture of the Bond and to Request Authority to Petition the Circuit Court for Appointment of a Receiver.  
**PSC Docket No.: 2005-110-W/S**

Dear Mr. Terreni:

For your docket, please find enclosed the original and five (5) copies of the Office of Regulatory Staff's Response to Piney Grove Utilities, Inc.'s Motion for a Continuance in the above-referenced matter. Also, if you would please date stamp the extra copy enclosed and return it to me via our courier.

Please let me know if you have any questions

Sincerely,

Benjamin P. Mustian

BPM/rng  
Enclosures

cc: Louis Lang, Esquire  
Jessica J.O. King, Esquire

RETURN DATE: N/A  
OK too

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2005-110-W/S**

2005 AUG -3 PM 4:20  
SO PUBLIC  
COMMISSION  
RECEIVED

IN RE:

Petition of the Office of Regulatory )  
Staff to Request Forfeiture )  
of the Piney Grove Utilities, Inc. )  
Bond And to Request Authority )  
To Petition the Circuit Court for )  
Appointment of a Receiver )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**


This is to certify that I, Rena Grant, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **Office of Regulatory Staff's Response to Piney Grove Utilities, Inc.'s Motion for a Continuance** in the above-referenced matter to the person(s) named below:

**VIA CERTIFIED MAIL**

Louis Lang, Esquire  
**Callison, Tighe & Robinson, LLC**  
1812 Lincoln Street, Suite 200  
Columbia, SC 29202-1390

**VIA U.S. MAIL**

Jessica J.O. King, Esquire  
**DHEC**  
2600 Bull Street  
Columbia, SC 29201

  
\_\_\_\_\_  
Rena Grant

August 3, 2005  
Columbia, South Carolina

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2005-110-W/S

AUGUST 3, 2005

IN RE: Petition of the Office of Regulatory	)	
Staff to Request Forfeiture	)	RESPONSE TO PINEY GROVE
of the Piney Grove Utilities, Inc.	)	UTILITIES, INC.'S MOTION
Bond And to Request Authority	)	FOR A CONTINUANCE
To Petition the Circuit Court for	)	
Appointment of a Receiver	)	

SO P. 110-W/S  
COM. 110-W/S  
2005 AUG -3 PM 4:30  
P. 110-W/S

The Office of Regulatory Staff ("ORS") hereby responds to the Motion for a Continuance filed by the respondent in the above referenced docket on August 2, 2005.

1. In its Motion filed on August 2, 2005, Piney Grove Utilities, Inc. ("Piney Grove") requested that the Commission continue the hearing in the above matter currently set for August 9, 2005. This motion was based upon the assertion that similar actions have been brought in the Court of Common Pleas and that, as a result of these actions, a receiver has been appointed for two Piney Grove systems and that Piney Grove has consented to the appointment of a receiver for the third. Further, Piney Grove contends that, as a result of another petition filed by ORS which, as in this proceeding, asks the Public Service Commission ("the Commission") to revoke the bond held by Piedmont Water Company, this proceeding is not ripe for adjudication.

2. In its Supplemental Answer filed with the Commission on July 29, 2005, Piney Grove requested that the Commission dismiss ORS's petition, in part based upon its assertion of the mootness of these issues. ORS would request that the Commission take notice of its Response to this request filed by ORS on August 1, 2005.

3. As previously stated in ORS's Response to Piney Grove's Supplemental Answer, simply because another party with a similar interest has been able to enter into a temporary arrangement should not dissuade the Commission from promptly hearing the facts of this case and making a determination as to whether ORS has a similar right. DHEC is, currently, the only party to these proceedings which has the independent ability to petition the Circuit Court for this relief and has entered into temporary receivership agreements for two of the Piney Grove systems; however, the Commission should not relinquish its jurisdiction over this matter simply because DHEC is pursuing a separate, but similar, resolution. The nature of these receivership agreements is such that Richland County, as the current receiver, is only bound by the terms of this agreement for one year and may be relieved of its receivership duties prior to this time upon seven days written notice. While a receiver has not been appointed for the Lloydwood system, it is reasonable to believe that a similar procedure would be established. In the plausible event that a receiver for these systems resigns from its voluntary position, a continuance of these proceedings would result in a hardship on the Commission, the parties, and, most importantly, the customers of Piney Grove. Such a continuance at this juncture would only delay a necessary hearing on the merits in order to afford ORS the opportunity to request that the Commission grant this authority. Further, the Piney Grove customers deserve the right to have an expeditious resolution to these issues so that all parties involved may move forward quickly and appropriately. By allowing the scheduled hearing to proceed, the Commission will allow the parties to be in a better position to know their rights and abilities concerning these matters.

4. As stated by the Respondent, DHEC and ORS have discussed the possibility of the City of Cayce agreeing to be appointed as receiver for the Lloydwood system; as Piney Grove also indicates, such an agreement has not been reached. By granting a continuance of this

proceeding, ORS would be denied the opportunity to put itself in a more advantageous position of negotiating with the City of Cayce or some other potential receiver; specifically, ORS may be able to provide certain incentives which another party could not. Moreover, such negotiations do not absolve Piney Grove of its responsibilities and obligations to provide adequate and proper service to its customers. As stated in its petition, ORS is asking the Commission to make a determination as to whether Piney Grove's current and past actions have resulted in providing inadequate and improper service for an unreasonable length of time. The ongoing negotiations do not affect the Commission's ability to make such a decision.

5. Piney Grove further argues that because these negotiations are ongoing, that the issue relating to the revocation of the bond is not yet ripe. "A controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." 22A Am. Jur. 2d Declaratory Judgments § 32. ORS would advise the Commission that its request to revoke the bond, to appoint a receiver, and to consider whether fines or penalties should be levied are all issues which should be decided by this Commission based upon Piney Grove's historical operations of these systems; therefore, the facts that ORS intends to present and the relief which ORS has requested are currently ascertainable such that the Commission can appropriately render a decision.

ORS prayed for several remedies from the Commission in its petition. In addition to granting the authority to petition the Circuit Court for appointment of a receiver, ORS also requested that the Commission determine whether Piney Grove failed to provide adequate and proper service and, if so, assess fines and revoke the bond as allowed by Commission regulation and statutes. S.C. Code Ann. §58-5-710 (2004 Supp.) provides that the Commission, after determining whether a wastewater utility has failed to provide adequate and proper service and

continues to fail to do so, may levy fines and penalties against the utility. Further, if the Commission determines the utility has failed to provide adequate and proper service, it may revoke the utility's bond pursuant to S.C. Code Ann. §58-5-720 (2004 Supp.). These remedies are clearly fashioned to rectify past wrongs and are not waived because of the mere possibility that another entity will agree to take on Piney Grove's responsibilities. ORS alleges that the customers of Piney Grove have suffered the consequences of inappropriate services for an unreasonable length of time and ORS's petition asks the Commission to resolve these matters. Any negotiations or discussions regarding another entity taking on these systems does not relieve Piney Grove of its obligation to address these issues. Further, the Commission should not delay Piney Grove's obligation to cure these wrongs should the Commission find such a remedy is required.

6. Piney Grove makes a final plea for a continuance in that ORS has filed a similar petition against River Pines Water System, Inc. (Commission Docket No. 2005-183-W) which asks the Commission to revoke the same sewer bond that is the subject of ORS's petition for Piney Grove. It is illogical to request a continuance in a matter that has been prepared for and that is set for hearing based on the possibility of a conflicting outcome in a proceeding in which a Notice of Hearing has not even been posted. As neither proceeding has occurred, it is impossible for the parties, and the Commission for that matter, to determine whether the bond would be precluded from being revoked in one proceeding because of some unknown future relief which may be approved in the other. Granting a continuance based upon such an argument would put the parties to both proceedings in a continual and absurd catch-22.

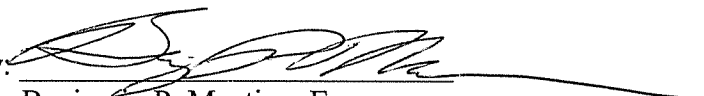
7. Piney Grove is subject to the jurisdiction of the Commission and is required to abide by the Commission's requirements as well as those of DHEC. Even though DHEC is

pursuing a legal remedy for the failure of Piney Grove to comply with DHEC's requirements, ORS cannot ignore its statutory mandate to represent the public interest in this matter. Further, the Commission should not disregard and delay ORS's petition alleging violations of Commission regulations solely on the grounds that another entity is pursuing a resolution to related, but separate, problems in another venue.

**WHEREFORE**, ORS prays that the Honorable Commission:

1. Deny the Motion of the Respondent to Continue the hearing set for August 9, 2005;
2. For other appropriate action which the Commission may deem necessary.

OFFICE OF REGULATORY STAFF

By:   
Benjamin P. Mustian, Esq.  
Post Office Box 11263  
Columbia, South Carolina 29211  
Telephone: (803) 737-0800

Columbia, South Carolina  
August 3, 2005